

1 say that on a preliminary title report.

2 Q. But there's no designation of homestead in that
3 title report?

4 A. No. And it's normal that there wouldn't be.

5 Q. And that's -- but that's your position, it would be
6 normal?

7 A. Yes.

8 Q. Now, you told the Court that the California
9 homestead exemption is \$150,000 sealed?

10 A. Yes.

11 Q. And then you argued that the Trustee has no value
12 because Ms. -- because your wife would get the first \$150,000
13 from any sale?

14 A. Any profit to it, yes. That's -- that's my
15 understanding.

16 Q. Okay. Now, the second -- you're not -- are you
17 testifying to the Court that -- arguing to the Court that
18 your wife gets the \$150,000 before those various mortgages
19 get paid?

20 A. You know, I thought of this and I don't have an
21 answer for that. If the -- I just don't know where that
22 second mortgage holds. If it's now property of the estate, I
23 haven't completely resolved that in my mind where that sits.

24 Q. Your wife voluntarily signed any mortgage held by
25 Coast Capital, correct?

1 A. Yes.

2 Q. And under the laws of the State of California, that
3 mortgage is valid even if the property is a homestead, isn't
4 it, a voluntary mortgage on the property?

5 A. Valid? Many mortgages are invalid that have been
6 signed and put -- we're seeing that every day today with the
7 foreclosures and the bad real estate market.

8 Q. My question to you, Mr. Jacobsen is, the fact that
9 this property might be a homestead is not a reason for
10 invalidating the Coast Capital mortgage, is it?

11 A. No. It's irrelevant.

12 Q. And, in fact, when you were proposing to sell the
13 property to the Davis' as a Chapter 13 debtor, you had not
14 challenged the Coast Capital mortgage as being invalid
15 because it encumbered homestead property, did you?

16 A. Are you asking me if I -- I'm not the seller. It
17 wouldn't be my job to challenge it.

18 Q. But you didn't object to Coast Capital getting paid
19 from the proceeds, did you?

20 A. I didn't have anything to do with objecting or not.

21 Q. And your wife didn't object to it either, did she?

22 A. I don't -- you'd have to ask her.

23 Q. I mean, you don't recall any objection being filed
24 in the case by her, do you?

25 A. I do not recall her objecting.

1 MR. LEWIS: I'll pass the witness, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. LEVICK:

4 Q. Did you reside at the Snows Hill property in Texas
5 when you filed bankruptcy?

6 A. No.

7 Q. Did you intend to later reside at the Snows Hill
8 property in Texas when you filed bankruptcy?

9 A. I don't know if I've thought of that or not.

10 Q. When you attempted to sell the property for the
11 first time, did you have a carve out for Alyse Malikyar to be
12 paid any exempt proceeds?

13 A. The first time I decided to sell the property,
14 meaning the Snows Hill property?

15 Q. Tice Valley.

16 A. Oh, Tice Valley property.

17 Say that again. Ask it again.

18 Q. When you in the Chapter 13 were trying to sell the
19 Tice Valley property, did you have a carve out for Alyse
20 Malikyar for her alleged homestead interest?

21 A. I had to put three lien holders. I -- my memory
22 isn't the same as your's. I don't remember that I wanted to
23 sell the property at all.

24 Q. In the Chapter 13, did you not file a motion to
25 sell Tice Valley that's in the Court's docket?

1 A. I don't know why I would -- if I did, I don't
2 recall doing that. It's been two years ago. I don't know.
3 I really don't remember.

4 Q. Are you telling me that you don't recall -- we've
5 had several hearings about this. You filed a motion to sell
6 in the Chapter 13 that was objected to by Ms. Countryman and
7 Mr. Lewis.

8 You don't remember filing a motion to sell the property
9 to the Davis'?

10 A. I remember the hearing. I remember the discussions
11 of it. I don't remember the exact form of the motion or the
12 wording that was in it. It would still seem that it's my
13 wife's house. At that time I believed it was my wife's
14 house. I was -- in my mind it was probably just agreeing to
15 the sale.

16 Q. Even though there's a motion with your name on it
17 filed.

18 MR. LEVICK: I don't have anything further,
19 Your Honor.

20 THE COURT: Anything further from you,
21 Mr. Jacobsen?

22 MR. JACOBSEN: I'm sorry?

23 THE COURT: Anything further from you as far
24 as evidence goes?

25 MR. JACOBSEN: No. I just stand on the fact

1 that it's a homesteaded property and it's exempt. It's
2 public record. I'm sorry I didn't bring a certified document
3 of it, but she's lived in it since 2001. Her son has lived
4 in it during the time we were out of the country. He still
5 lives with us. And that also is mentioned in the homestead
6 law.

7 I think it's just that simple. I think everything
8 surrounding the other issues that they're bringing up are
9 strictly to confuse the plain and simple truth that it's
10 homesteaded and it should be exempt.

11 THE COURT: Okay. You may step down.

12 Any further cross-examination of the witness?

13 All sides have rested and closed on evidence. I'll
14 give each side a total of ten minutes to make any further
15 arguments they wish to make.

16 You go first, Mr. Jacobsen. If you don't reserve any
17 time, then when you finish your ten minutes, you're finished.
18 So if you do reserve time, then you'll have to stop some time
19 in that ten minutes.

20 Okay. You may proceed. I think you -- both sides
21 have pretty well stated what they -- what their positions
22 are, so you don't necessarily have to go over that. But
23 whatever you want to do.

24 MR. JACOBSEN: I believe you're right. I
25 think that it would just be reiterating the same thing. So I

1 reserve the time to respond to his.

2 THE COURT: All right.

3 MR. LEWIS: I'll be as brief as I can, Your
4 Honor.

5 We'd refer the Court to the cases, Baketell bankruptcy
6 and other cases cited in our objection regarding the
7 requirements of a California homestead. And we submit that
8 he hasn't -- that this property doesn't qualify under the
9 requirements because, first of all, there's no written
10 declaration or designation of homestead on file. As of the
11 bankruptcy filing date there's been no proof or evidence that
12 there's a written declaration of homestead as of that date.

13 Second, it would not apply because you have to live
14 there. It's not like Texas. You actually have to use it as
15 your residence. The evidence is, they weren't living there,
16 neither of them was living there at the time and haven't
17 lived there throughout the course of this bankruptcy case.
18 The Court can take judicial notice of Mr. Jacobsen's
19 bankruptcy schedules filed in this case where he claimed a
20 Texas homestead. The property that was listed as exempt on
21 his schedules is property in Texas.

22 The testimony in his deposition shortly before -- less
23 than a month -- about a month before he filed for bankruptcy
24 was that, yes, his wife, Mrs. Maliykar, also lived there in
25 Allen, Texas. So he didn't -- it doesn't qualify as a

1 homestead, even if that was a sole reason for abandonment in
2 this case. We think the Trustee has shown that there is not
3 only -- there's substantial value to the estate, it's
4 certainly not inconsequential, I don't think grounds have
5 been shown to abandon the property.

6 MR. JACOBSEN: Can I respond to that?

7 THE COURT: I'll let you respond when
8 Mr. Levick finishes.

9 MR. LEVICK: Firstly, Your Honor, I just want
10 to say, because I know that the Court regards its time very
11 seriously, this certainly was not an emergency. There was no
12 motion for relief from stay on file. So for Mr. Jacobsen to
13 call this an emergency hearing I think is not appropriate.

14 MR. JACOBSEN: It wasn't an emergency hearing.

15 MR. LEVICK: On the section on abandonment in
16 the Code he -- there's been no evidence to meet the test.

17 Mr. Jacobsen admitted that the Trustee has the second
18 lien. That the first lien is approximately \$800,000. His
19 schedules reflect a value of 1.50 million. If this Court
20 somehow agrees that there's some sort of homestead, then the
21 Court -- we can simply foreclose out and become the owner and
22 foreclose subject to the first lien and sell.

23 Your Honor, twice this property was almost sold which
24 would have been a big benefit for the creditors. And
25 Mr. Jacobsen has thwarted this twice. So then on the eve of

1 trial, we have Ms. Malikyar signs a judgment that says, it's
2 community property. And how at the 11th hour she comes up
3 with some sort of homestead exemption --

4 THE COURT: I'm unclear as to what judgment
5 we're talking about.

6 MR. LEVICK: It's the judgment I furnished as
7 our Exhibit 1.

8 THE COURT: All right.

9 MR. LEVICK: Which we were trying -- the Court
10 wanted us to get a declaration that the Tice Valley property
11 was property of the estate. And it's the one that you said
12 you would mark as Exhibit 1 when I came up to the Court.
13 It's the judgment --

14 THE COURT: Okay.

15 MR. LEVICK: That Ms. Malikyar signed off on.

16 THE COURT: Okay.

17 MR. LEVICK: By making it community property,
18 Your Honor, it is owned by Mr. Moser. She can no longer
19 accept. You can't have non-filing spouses claiming separate
20 exemptions from the spouse. The only -- 522(b) is very clear
21 that Courts have interpreted 522(b) to mean that only a
22 debtor and not the non-debtor spouse has the authority to
23 elect exemptions, period. And I'll cite you to page 6 and 7
24 of the case that I furnished to you that I wish I would have
25 furnished and had time to do a brief earlier, but I thought

1 the hearing was a week later.

2 There is simply no evidence here on the abandonment.

3 And this is just more of Mr. -- what we've had to go through
4 in this case to just try to administer assets, Your Honor,
5 like a normal Chapter 7 Trustee would do in any case. I
6 would ask that this motion be denied.

7 THE COURT: Okay. Let me -- refresh my
8 recollection. Who is on the phone, or who is that person
9 representing?

10 MS. MALIKYAR: This is Alyse Malikyar.

11 THE COURT: Oh, okay.

12 Okay. Mr. Jacobsen.

13 MR. JACOBSEN: Let me address these one at a
14 time.

15 They made the claim that there's no written, you know,
16 document for the homestead, which I've already addressed that
17 there is none required in California. You just have to live
18 there.

19 Alyse Malikyar did live there. She has lived there
20 continuously up to the time of about my filing of the
21 bankruptcy. And I'm sorry if I don't remember within a week
22 or two when we moved out. But it was right about that same
23 time.

24 California Code, which I've provided you a copy in my
25 documents, allows for six months after you move out for the

1 exemption for homestead to still apply. So their argument
2 that she wasn't living there the second that I filed
3 bankruptcy is not relevant.

4 I filed my initial schedules where I did not put the
5 Tice Valley house on the schedules and per the advice of my
6 attorney, he said we'll claim one of the houses you own in
7 Texas, so I did, because it's just the one I used for my
8 address when I was out of the country. I had a room there
9 that I would go and I could stay there. I mean, that's the
10 only real estate that I had that I had a bed in in the United
11 States. And so his recommendation was to claim that.

12 In my amended schedules I turned that around. I took
13 that off. I did not claim any homestead exemption. And so
14 my wife clearly has a homestead on the house in Tice Valley
15 because it complies with all of the rules. She's lived there
16 continuously. She moved out to sell the house to somebody
17 else where she would normally take that money and buy another
18 house which will be homesteaded.

19 THE COURT: Now as I understand it, you don't
20 dispute the fact that the lien is still on the property if
21 the Trustee owns it? In other words, that would have to be
22 paid before your wife could receive anything out of this; is
23 that --

24 MR. JACOBSEN: Exactly. Exactly, Your Honor.
25 And that's why it's even more important to allow this.

1 Because the -- it doesn't change the Trustee's monetary
2 position at all by abandoning the house. There's not going
3 to be enough money in the sale of the house to pay the full
4 amount of the lien any way.

5 THE COURT: Then she'd get nothing out of it
6 either, would she?

7 MR. JACOBSEN: Yes, she would. Because she's
8 going to refinance and pay -- probably pay off the Trustee
9 and pay off the first mortgage, and pay off -- I think she'll
10 negotiate with --

11 THE COURT: No. This is something new that I
12 haven't heard before. Was I incorrect? Have you said
13 anything about this before that she was going to refinance
14 this house?

15 MR. JACOBSEN: No. There's two things that --
16 she wants to keep the house, Your Honor. We both want to
17 keep it and move back into it. It's not -- I didn't really
18 see that it was relevant here because the argument is about
19 the homestead that was honored at the time that the
20 bankruptcy was filed. So I didn't --

21 THE COURT: Even if what you're saying is
22 true, and even if she has a homestead and you have to
23 refinance it, then she's still going to have to pay off this
24 mortgage, isn't she?

25 MR. JACOBSEN: Yes.

1 THE COURT: Which the Trustee owns.

2 MR. JACOBSEN: Which the Trustee owns. So by
3 abandoning the house doesn't change anything about the money
4 that would come to the Trustee. He still would get his
5 money. The homestead still is valid. It's still exempt.
6 And then she refinances or sells the house, or the bankruptcy
7 is over and the money is just left over. It just goes back
8 to -- what would it go back to, me, if there's money left
9 over? So it doesn't change anything by abandoning the house.
10 The Trustee would still get his money.

11 THE COURT: Okay. Does that complete your
12 argument?

13 MR. JACOBSEN: No.

14 THE COURT: Okay. You have two minutes.

15 MR. JACOBSEN: Okay. I'll go fast.

16 It's been mentioned that my wife lived in Texas. And I
17 did say she lived in Texas, that's true. But her homestead
18 and primary residence was in California. She lived in two
19 different locations. So that's an accurate statement, but
20 they have tried to twist it around saying that she didn't
21 live in California and that's not the case at all.

22 I didn't amend my schedules a third time to show an
23 exemption for homestead because I was advised that I had
24 already amended them twice and that was enough and that the
25 Court really wouldn't look kindly on me changing the

1 schedules for a third time. But if you were to allow me to,
2 I could go ahead and amend the schedules at this time and do
3 that.

4 And then it was brought up a non-debtor spouse can't --
5 you know, motion to abandon. But it's -- it's now community
6 property. It's a homesteaded property. And the motion is
7 completely proper that I am motioning to abandon property.

8 That's all.

9 THE COURT: All right. We'll take a ten
10 minute recess and I anticipated making a ruling by that time.

11 (Brief recess ensued.)

12 THE COURT: Please be seated.

13 The ruling is as follows.

14 The motion to require the Trustee to abandon the real
15 property, Tice Valley Boulevard, Walnut Creek, California is
16 denied. However, there's some conflict on the testimony.
17 Mr. Jacobsen personally testified in his deposition that he
18 and his wife, Alyse, lived together in Texas since 12/05.
19 The debtor has failed to prove that the subject property was
20 or is burdensome or of inconsequential value or benefit to
21 the estate. This would be a necessary prerequisite finding
22 for the debtor to have been successful on his abandonment
23 motion.

24 It is further undisputed that the second lien position
25 is owned by the Trustee and would have to be paid off before

1 Mrs. Jacobsen would receive any funds, if any, from any claim
2 of homestead.

3 Reserve the right to make further findings of
4 conclusions.

5 Anything further from either side?

6 Okay. We stand adjourned.

7 Excuse me? Oh, okay. Didn't realize we had another
8 motion.

9 MR. LEWIS: Your Honor, may I be excused from
10 the second motion? I think Mr. Levick can handle that one
11 well without me.

12 THE COURT: Okay.

13 MR. LEWIS: It will make it go faster.

14 THE COURT: That's probably true.

15 MR. LEVICK: Your Honor, is the Court going to
16 issue an order on that, or do I need to draw up an order?

17 THE COURT: Just draw up an order. You can
18 say the -- in the order you can say the motion for
19 abandonment is denied for the reasons stated on the record.
20 That would be sufficient.

21 MR. LEVICK: Thank you.

22 THE COURT: You may proceed.

23 MR. JACOBSEN: Okay. The second motion is
24 regarding the remaining Texas houses that are part of the
25 estate.

1 When the amended schedules were drawn they showed
2 seven, I believe, houses in Texas that were owned some of
3 them by my wife and some of them by myself that became
4 community property because of the -- the stipulated judgment.

5 Three of them have been abandoned back. They've all
6 been on the market for going on a year now trying to sell
7 them. With the real estate market that it is, the property
8 value has gone down. There is no real -- they've made every
9 attempt to sell them and they haven't sold them and the
10 argument is that they should be abandoned along with the
11 other three that have already been abandoned.

12 That's it.

13 MR. LEVICK: Your Honor, I'm going to make a
14 little briefer opening than I made last time. I wanted to
15 give you a flavor of the case and I was able to do that
16 through the last hearing.

17 Your Honor, this case has been extremely difficult.
18 When we filed our motion last year to employ Michael Crane,
19 Mr. Jacobsen filed his own objection to the motion. And we
20 had a hearing here in the court that lasted several hours to
21 employ a broker. I've never even had a hearing before to
22 hire a broker. I've never even received an objection in all
23 my history as being a bankruptcy lawyer. But that hearing
24 lasted several hours.

25 And the reasons that Mr. Jacobsen posited in his

1 objection is he didn't want the Trustee administering the
2 assets. He didn't want the Trustee trying to sell houses.
3 And a lot of other reasons that really didn't make sense.

4 The judge granted Michael Crane the ability to start go
5 selling properties about a year ago. But it really wasn't
6 until November of this year when the stipulated judgment was
7 entered into that Michael Crane really had the ability to go
8 full force and sell these houses, Your Honor, because they
9 were cloned in Alyse Malikyar's name, even though we knew
10 they were really community property and we needed that agreed
11 judgment to satisfy title concerns so that he could sell.

12 So we've had these four houses since November trying to
13 sell them, Your Honor.

14 Now, I'm going to talk about the four properties and
15 what is happening to give a flavor and then I'm going to make
16 sort of -- tell you what Mr. Moser -- what Mr. Moser is
17 thinking.

18 One of the houses is the Appalachian house. And I
19 would like the Court to take judicial notice of a motion to
20 sell that we filed yesterday on Appalachia. And I emailed
21 that motion to Mr. Jacobsen yesterday as soon as we filed it.
22 The second after we filed it. And what the Appalachia sale
23 proposes to do, there are two liens on the property, both by
24 Wells Fargo. Wells Fargo will agree to release its second
25 lien and on the first lien agree to some sort of reduction so

1 that the estate can generate at least \$3,000. But based on
2 our discussions with their representative, the estate could
3 generate as much as 8, 9, or \$10,000 from the sale.

4 Now, Your Honor, what was the subject of a big hearing
5 about a year ago was Michael Crane testified for a while
6 about the subject of short sales. He said, We have this new
7 thing that has hit the economy. And, boy, could he see the
8 future when he testified. And the thing that is happening is
9 the short sales where first lien holders do not want their
10 property back. We're able to get a contract. We're able to
11 go to the first lien holder, the second lien holder, get them
12 to take a reduction. Carve out money for the estate and get
13 a sale approved.

14 And Judge Rhoades approved his employment with the
15 understanding that there will be some short sales. And we
16 sold some of these properties already. And I believe one has
17 already been a short sale that's been approved, Your Honor.
18 So that's the Appalachia property.

19 The second property is the Sailmaker property. Your
20 Honor, the schedules show that there's equity, Your Honor.
21 Mr. Crane can testify about the interest he's gotten on
22 Sailmaker. And, Your Honor, Sailmaker is an income producing
23 property, Your Honor. We have a tenant in there and we're
24 receiving rents.

25 The original lift stay order on Sailmaker, Your Honor,

1 that the stay does not lift until the very end of July, which
2 means that they cannot even post until September. So we
3 certainly need more time to sell Sailmaker, especially since
4 this is the selling season. And Mr. Crane is confident he
5 can sell that one.

6 The third property is Snows Hill. The mortgage
7 company is Saxon Mortgage. The stay did lift on April 4th,
8 Your Honor. It is our understanding they have not posted for
9 May and that they are not anxious to post this property and
10 would like us to try and sell it.

11 We have a tenant in there paying rent. And we would
12 like to keep the Snows Hill property and have a little bit
13 more time to try to sell it, especially since it hasn't been
14 posted.

15 The fourth property is Streams Way, Your Honor. The
16 stay did lift earlier on Springs Way. We have no tenant.
17 And we're prepared to abandon Springs Way on the record, Your
18 Honor.

19 These properties are insured. The remaining Sailmaker
20 and Snows Hill, they're income producing, Your Honor.
21 Appalachia we have a motion to sell. I would ask the Court
22 to allow us to abandon Streams Way on the record and let us
23 go about trying to administer our estate, Your Honor.

24 THE COURT: Okay. Streams Way abandonment
25 motion will be granted by the -- both parties on Streams Way.

1 MR. JACOBSEN: These properties were purchased
2 by my wife as part of our business. We're in the real estate
3 investment business. We buy, run, operate, and manage
4 properties. This is her investment portfolio that doesn't
5 really have any equity because many of them were bought with
6 nothing down loans. But they're producing rent. And this is
7 part of our business, Your Honor. This isn't just an
8 investment. The management of these properties, renting them
9 out, this is part of our income.

10 The Trustee has -- has collected the rents on these
11 properties and made no payments on them at all. I'm new to
12 this bankruptcy business. But it's my understanding that the
13 Bankruptcy Court's objective is to protect the interest of
14 secured creditors. And I can't see where not making any of
15 the payments on it and attempting to sell the house at a low
16 price and basically pay them -- either wash them out on the
17 second or pay them considerably less on the first in order
18 for the Trustee to gain \$2,000 is watching out for anybody's
19 interest except for the Trustee's. And its billable hours
20 are probably more than the \$2,000. And I just -- I mean,
21 I've always believed in paying my debts.

22 And I think that Wells Fargo should get on the
23 Appalachia house -- if we retained that house, they'd keep it
24 for another five years. They'd get all of their money when
25 we sold it. And that would be protecting the interest of the

1 investors that are on these properties. The investors
2 meaning the lenders. And to grind the lender down by 50,000
3 or \$30,000, or whatever, just so he can get \$2,000, I don't
4 understand the thinking on that. There's, you know -- and
5 then there's the issue that this is our business that they've
6 taken these houses.

7 The Snows Hill house on April 4th the stay lifted and
8 they can sell the house at any time. They are more than
9 willing to have us keep the house. That's my house, not my
10 wife's. And I believe we'd negotiate some desirable terms
11 where we could make up the back payments or something. I
12 don't know.

13 MR. LEVICK: Excuse me, which house was that?

14 MR. JACOBSEN: Snows Hill.

15 And the comparable sales there that I've provided as my
16 exhibits to my motion show that there is no equity in it.
17 It's just a matter of collecting the rents, making the
18 payments on the house, which they're not doing, and we get a
19 tax deduction for depreciation on the property. It's all
20 part of the business venture. And for them to hold it
21 hostage for any longer collecting the rents and not making
22 the payments is just watching it go down the sewer.

23 The same thing can be said for the other houses,
24 really, too. They have -- they have tried for a year to sell
25 these. Mr. Levick said they didn't really try to start

1 selling them until November. You heard that. And yet they
2 have sold two of them in July before that. So if they
3 weren't really trying to sell them, how come they sold two of
4 them in July? They've been trying to sell them for going on
5 a year. And there's a complete false statement.

6 The only reason we objected to the sale of these houses
7 was because of the issue of community property. But once
8 that was resolved, it's my recollection that we, you know,
9 we're not objecting to it. We didn't object to the sale of
10 the Acklin house.

11 So, yes, they're income producing as long as you don't
12 make any payments on them on the mortgage or the taxes. So
13 they really are income producing in that sense to the
14 Trustee.

15 The motion calls for abandoning the house and returning
16 the money collected in rent on these houses which would be
17 applied towards the payments so that they would be -- so we'd
18 be able to keep the houses. They never -- these houses never
19 should have been held hostage for all this period of time and
20 just collected the rents and not made the payments on the
21 houses where the lenders have secured liens and they should
22 have been paid with the money that's coming in. So the
23 request here is to return the houses via abandonment and
24 return the money that was collected in the rents so that the
25 payments, and taxes, and insurance, and things can be paid.

1 I'm finished.

2 MR. LEVICK: Your Honor, I want to clarify one
3 thing on the record. When we agreed to abandon effective
4 today the Streams Way house, we're not agreeing to abandon
5 the rents that we've received on that property, Your Honor.

6 THE COURT: All right.

7 MR. LEVICK: And if the Court requires, I mean,
8 I don't know if the Court -- I mean, if Mr. Jacobsen is
9 through, I would argue he hasn't met any sort of burden under
10 Section 554. But if the Court requires, I know we have --
11 we're into the lunch hour, but we have a couple of witnesses
12 if the Court would like to hear them.

13 THE COURT: You can make a short record.

14 MR. LEVICK: Okay. I will call Michael Crane
15 to the stand.

16 (The witness was sworn by the Court.)

17 MICHAEL CRANE

18 The witness, having been duly sworn to tell the truth,
19 testified on his oath as follows:

20 DIRECT EXAMINATION

21 BY MR. LEVICK:

22 Q. Please state your name for the record.

23 A. Michael Crane.

24 Q. Are you the broker employed by Chris Moser in this
25 case?

1 A. Yes.

2 Q. Do you recall a hearing that we had approximately a
3 year ago to employ you in this matter?

4 A. Yes.

5 Q. And do you recall giving any testimony about short
6 sales and -- what was your collection about your short sale
7 testimony at the hearing?

8 A. Especially in this climate, the short sales are
9 actually beneficial to everyone involved. Because these
10 lenders don't want the properties back. They would prefer
11 not to foreclose on them. And they are more than happy to
12 work out some degree of a carve out for the Trustee. It does
13 vary, but it usually -- it is a significant amount that they
14 allow the Trustee to have for its unsecured creditors.

15 But the short sale program that we've been doing now
16 for about five years has been very successful. And other
17 than that, I can just say it's a mutually beneficial program
18 for all of the parties.

19 Q. Mr. Crane, have you been able to accomplish a short
20 sale in this case?

21 A. Yes.

22 Q. And which property was that?

23 A. Actually, Sky Harbor is the first one and the other
24 one was Acklin. And I refer to just the street names.
25 That's how I referring to those.

1 Q. And which one of those was the short sale?

2 A. To the best of my recollection, Sky Harbor was.
3 I'm not 100 percent sure about Acklin. I think Acklin may
4 have not been a short sale, There was enough equity, I
5 believe, in that to pay the rents.

6 Q. Do you remember what those sales generated to the
7 estate?

8 A. Again, my recollection is that Acklin was
9 approximately \$10,000 to the estate and Sky Harbor was
10 approximately 7,000. And I admit, I don't have those right
11 in front of me to see the settlement statements, but I
12 believe that is close.

13 Q. And let's talk about the motion to sell that we
14 filed on Appalachia yesterday.

15 Who is the proposed purchaser?

16 A. It's a lady named Susan Romans.

17 Q. And do you have other people still interested in
18 the property?

19 A. Two other back-up buyers and literally last evening
20 at approximately 9:00 a gentleman left a message on my voice
21 mail saying that he was prepared to pay 124 to 125,000 for
22 it, which is approximately 3 to 4,000 more than the amount in
23 the motion. Therefore, we would probably -- if we do get an
24 objection to the sale, we would come and have an auction and
25 hopefully gain more for the estate out of that auction.

1 Q. So with your negotiations with the first and second
2 lien holder have mentioned the estate receiving no less than
3 3, are you confident or optimistic the estate could receive
4 as much as 8, 9 or even more than \$10,000?

5 A. I would say, yes. Probably 8 to 10 would be
6 reasonable to expect.

7 Q. Okay. Were you hampered at all before this
8 stipulated judgment was entered into trying to sell these
9 four remaining houses?

10 A. Yes. In the early stages of attempting to market
11 them due to the ownership question as far as Ms. Malikyar's
12 ownership of these and the way the title companies would view
13 that, it was so uncertain that we couldn't proceed with any
14 purchasers because of ownership issues.

15 Q. On Sailmaker, tell me what you think about
16 Sailmaker. I know it's -- the scheduled debt is about 133.
17 What's going on with the Sailmaker property?

18 A. Again, the odds of us selling that are very good.
19 But the tax value on the house is about 183,000, I believe,
20 if my memory is correct. And we feel confident that we will
21 get an offer that will probably pay off the first lien in
22 full. So that would probably have equity.

23 Q. Okay. And so Sailmaker should generate money for
24 the estate?

25 A. Yes.

1 Q. Do you have interest in Sailmaker?

2 A. Yes. We have had many people look at it. And for
3 varying reasons, it's just been tough sometimes in this
4 market to -- you know, with as many houses that are for sale,
5 to sometimes get someone to focus on it. But we have had a
6 lot of interest in it and I feel confident we will get it
7 sold before we -- before it would be foreclosed.

8 Q. But that property is in good shape?

9 A. Yes. And it's occupied by a couple that keeps it
10 up well.

11 Q. Let's talk about the Snows Hill property.

12 Is there also a tenant there?

13 A. Yes.

14 Q. And the mortgage company is Saxon, I have on my
15 chart.

16 What's going on with Snows Hill?

17 A. The -- one of the main reasons for the delay in
18 selling Snows Hill is that the tenant, for whatever reason,
19 has been repeatedly challenging my legitimacy as the broker
20 for the estate, which is clearly -- you know, I am the broker
21 for the estate. So they've actually been -- the tenant has
22 at times been difficult to work with on the sale. We've
23 gotten that resolved now by sending them the documents they
24 asked for and we're proceeding to sell the house.

25 Q. Is there interest in Snows Hill?

1 A. Yes. Again, the normal level of interest that
2 people driving around looking for homes call in. But, yes,
3 we are getting calls on it.

4 Q. And that would have to be a short sale, correct?

5 A. That one I'm fairly certain will be a short sale.

6 Q. But you've worked with Saxon before on short sales?

7 A. Yes.

8 Q. And they're amenable?

9 A. Yes.

10 Q. And when you've accomplished short sales with
11 Saxon, what's about the average amount of money that's
12 generated into the estate for a short sale?

13 A. Usually a minimum of 6,500, \$7,000 and up. On a
14 house of that value, which I believe is approximately
15 200,000, probably \$10,000 would be the carve out. But a
16 minimum of 7.

17 Q. Okay.

18 MR. LEVICK: Your Honor, I don't have anything
19 further.

20 THE COURT: Okay. You may cross-examine.

21 CROSS-EXAMINATION

22 BY MR. JACOBSEN:

23 Q. Do you have Appalachia in escrow?

24 A. Sir, we filed the motion to sell, so, yes, we --
25 when you say escrow, maybe I'm not sure what you're saying

1 escrow is.

2 Q. Have you opened escrow?

3 A. Yes. We've got a title company that's opened a
4 title file on it, yes.

5 Q. Okay. So you have an escrow number and everything?

6 A. It's open.

7 Q. What's opened?

8 A. If it -- again, the title company has prepared the
9 documents. Whether they have opened the file on it, I can't
10 say because I don't know if they have or not.

11 Q. It's my understanding that it's very recent that
12 you did thing, like how many days ago?

13 A. The motion to sell was filed, I guess, yesterday,
14 did you say?

15 MR. LEVICK: Yes.

16 A. I don't have a copy of the motion to sell, but I'm
17 assuming it was filed yesterday. But the case -- the attempt
18 to sell the house has been certainly, you know, before
19 yesterday. We've been marketing the house, so the title
20 company has been working with us on the file for a while.

21 Q. So right before this hearing to abandon an offer
22 mysteriously appears somewhere.

23 How much is the offer for?

24 A. The one filed was \$121,200. That was the one that
25 was filed in the motion. It's always open to higher offers.

1 And last evening I had a phone call, I mentioned, that -- the
2 buyer said between 124 and 125 he would be willing to pay.
3 We don't know that yet, but we have filed one that is 121.2.

4 Q. That property was purchased for, I don't recall
5 exactly, but like around 150,000. And so right before this
6 hearing you come up with a quick offer for 124,000?

7 A. No.

8 MR. LEVICK: Objection. I don't know if
9 there's a question in there.

10 THE COURT: Yeah.

11 Q. You stated that before November that it was
12 difficult to sell because of ownership problems and dealing
13 with the title company.

14 Didn't you sell two houses prior to that?

15 A. I believe we did. And I don't remember if those
16 were in your name or your wife's name. I just don't recall
17 which ones. But, yes, I believe we sold two of those. And
18 the dates are roughly July, that's probably the case. But I
19 don't know who was on record as the owner for those houses.

20 Q. So there wasn't a title problem with either of
21 those houses, was there?

22 A. I don't know. I just can't recall the details of
23 the title. I don't know who was on record. I don't know who
24 was the title owner, but we did get them sold to the benefit
25 of the creditors, unsecured creditors.

1 Q. Well, I can tell you one house was mine and one was
2 my wife's. But when I say there was no title problem, they
3 closed and there's title insurance for the new owner and
4 there was no particular problem, correct?

5 A. I would say the one that was in your name, probably
6 not. The one that was perhaps in your wife's name, I would
7 have to go back and just look if there was any problem with
8 the title company you brought up or whether we had to remedy
9 that some way. I honestly don't remember the details of
10 whether the title company had any issues at the time of the
11 closing or not.

12 Q. What would be the title issues that would be a
13 problem?

14 A. Title issues would certainly be a result of whether
15 it was affected by the bankruptcy or not, meaning if your
16 wife a non-filing spouse and the estate only owned half of
17 that house rather than it being community property where they
18 owned 100 percent, that is where the title problems
19 originate. Because if it's owned 50 percent, obviously you
20 need certain cooperation with the non-filing spouse. If it's
21 community property, they can sell her interest along with
22 that. But that's the only reason. When there is any other
23 dispute over the ownership name of the house like that, it
24 just brings up intrinsic title problems because you have to
25 make sure that you're conveying title free and clear.

1 Q. And there were no problems, they went through free
2 and clear?

3 A. I assume they did.

4 Q. You mentioned Sailmaker, your words were, Maybe
5 enough money would come out of the sale to pay off the first.
6 That's my -- I wrote them down as you said it.

7 A. In other words, there's a possibility that we may
8 get enough for that one that it would cover the liens that I
9 am aware of right now on the property. I don't have the
10 title report in front of me, but if the first lien is the
11 only lien, or if there's two liens, I'd have to see which
12 ones you're referring to. But it appears there's equity in
13 the property above the mortgage liens.

14 Q. So maybe you'd get a little bit of money? You've
15 had that house -- you've been actively trying to sell that
16 house along with Sky Harbor and Acklin, but you did sell
17 those, since, what, May of last year?

18 A. Again, I'm sorry, I don't remember when that one
19 would be, quote, on the sale list, or whatever. But it's
20 probably roughly the same time frame.

21 Q. So it's been about a year it's been on the market?
22 And that would be true for all of the houses that you have,
23 all of the Collin County houses; is that correct?

24 A. They were part of the estate when I was hired as
25 the broker. But I would not say that all of the houses were,

1 quote, in saleable shape at the time due to the previous
2 things I just mentioned about the ownership issues. And keep
3 in mind that the short sale program that Mr. Levick asked
4 about earlier is a benefit to creditors that the secured
5 creditors, these mortgage companies, that have repeatedly
6 approved these deals because it is better for them to let me
7 sell the house and they're happy to give a carve out to the
8 bankruptcy estate. So the creditors are not objecting to any
9 of this. They're fully agreeing to it. And they're allowing
10 us to sell these because of the benefit to them also.

11 Q. If my wife and I were to keep these houses, the
12 lenders loan amount would remain the same. And when the
13 houses are eventually sold when the market improves, they
14 would get all of their money.

15 So how would you coming along and saying, Well, I'll
16 give you less than all of what's owed, how would that benefit
17 them over us getting the property back? They would get all
18 of the money if they got it back -- if retained the property.

19 MR. LEVICK: I'm going to object. That
20 assumes some facts that are not in evidence.

21 THE COURT: Sustained.

22 Q. How does it benefit the lender to accept less than
23 what's owing?

24 A. Honestly, I'm not in a position to state why a
25 lender would view that as a benefit, they do. And so I'm not

1 going to speak for the lender. I don't know why they view
2 that. They must have reasons in their own internal
3 operations that make these beneficial to them because they
4 approve them. Along with a sizeable payment to the Trustee
5 on each of these sales. A significant payment.

6 Q. How long have you been practicing real estate?

7 A. Since 1983, I was a broker, and two years prior to
8 that.

9 Q. So a long time?

10 A. A long time.

11 Q. You've been at it for a while.

12 What is your understanding of a lender's willingness to
13 accept a short sale in conjunction with the status of the
14 payments on the house? And let me clarify that. When I say
15 status on the payments, I mean the options are the payments
16 are completely current, or the payments are month behind. Or
17 the third would be, they're so far behind the lender has
18 actually filed a notice of sale.

19 What is your understanding of a lender's willingness to
20 accept a short sale under those conditions, those three
21 different conditions

22 A. Again, I mean, you're asking me to speak for a
23 lender, and I just --

24 Q. No, I'm not. I'm asking -- you've been in real
25 estate a long time and doing these. What is your

1 understanding?

2 MR. LEVICK: I'm going to object. I think
3 this goes beyond the scope of my direct.

4 THE COURT: Overruled.

5 A. The -- the lenders' temperament varies for many
6 reasons. It could be the current market conditions, whether
7 or not they view that recovering the property is something
8 that would benefit them. In other words they're going to go
9 through an expense of foreclosure, attorney's fees, any other
10 attendant costs that would go along with recovering the
11 property. And they weigh that against the benefit of the
12 Trustee selling it and just having that sort of off their
13 books at that point. They've resolved it. They've looked at
14 it. They've scrutinized every deal we submit to them. So to
15 answer your question, their individual temperament based on
16 the conditions you just outlined, I have no idea why a lender
17 at any given point in time would say they would agree to do
18 it.

19 There are instances where they don't. If they view
20 that there's a lot of value to them and they don't want to do
21 it, they may not. But I find a large number of these deals
22 are approved that are otherwise, quote, non-equity
23 properties. Even if there's no equity, the property lenders
24 allow us to sell them and allow a carve out for the estate
25 that is sizeable, usually between 7 to \$10,000 per asset, if

1 that answers your question.

2 Q. I'm going to ask it a different way, because it
3 doesn't really answer my question.

4 Have you ever approached a lender for a short sale
5 where the payments are completely current on the house?

6 A. Yes.

7 Q. And have you had the lenders be reception to a
8 short sale where the payments are current?

9 A. Yes.

10 Q. Have you approached a lender for a short sale where
11 the payments are completely current and the house is worth
12 more than the loan amount and have them accept a short sale?

13 A. I wouldn't approach them for a short sale if it was
14 worth more than that. I would have sold it and just paid off
15 the first lien -- well, when I say I, there would have been
16 proceeds sufficient to pay off the first lien, so we wouldn't
17 have approached them on that one.

18 Q. You mentioned a lender's incentive to accept a
19 short sale as being -- one reason was that they would not
20 have to go through the foreclosure process which is
21 expensive; is that correct?

22 A. I don't know how expensive it is. But that would
23 be one of the reasons they would prefer not to take the
24 property back, whether it's the expense or the liability once
25 they own the house, whatever their reasons are, they find it

1 preferable to allow the Trustee to sell the house rather than
2 them taking it back in a foreclosure. Again, I can't speak
3 for their modifications. I just know that they've approved
4 these. When we have submitted the documents they asked for
5 and come back and said, We'll approve the sale.

6 Q. Is it your understanding, then, that if the
7 payments are completely current on a house, they're less
8 receptive to accepting that?

9 A. I didn't say that.

10 Q. No. I'm asking you now.

11 A. I would -- it's total speculation. I have no idea
12 whether they would or wouldn't. I know that I've done sales
13 on houses that were completely current and they've accepted
14 less than the debt on them. Yes, I've had instances like
15 that.

16 Q. When did you place your signs in front of these
17 houses?

18 A. You know, date wise, I just don't know. I would
19 say it was in -- normally once the houses are determined to
20 be ready for sale. And that could be everything from do we
21 have current keys. I typically have to go check the houses
22 out to make sure we have access. I have to see many things
23 about the house before we can put it on the market. So
24 assume 30 days or so after I probably got the case, I would
25 say, roughly. And I'm talking about getting the case when

1 Mr. Moser employed me. I would say roughly 30 days after
2 that I would probably have started working on some of it. I
3 don't remember because of these other lien -- not lien
4 issues, but the ownership issues between your wife and
5 yourself on who owned them. Some of them I did not stop
6 marketing until much further into the calendar because of
7 those issues. I knew that we had ownership questions that we
8 weren't clear on and I wasn't going to stop marketing a house
9 that I didn't know I could sell.

10 Q. Have you shown the Snows Hill house to any
11 perspective buyers?

12 A. Yes.

13 Q. When was the most recent showing?

14 A. It was a long time ago. We've been having -- as I
15 mentioned, the tenant in that house has been quite a bit
16 difficult to deal with. And seemingly -- and this is just my
17 personal interpretation is, they have been willingly trying
18 to stop me from selling that house. So I'm challenging my
19 legitimate -- legitimacy as the broker. And not being there
20 when someone needs to come by and see the house, or whatever.
21 There have been a number of reasons why that one has been a
22 little bit of a delay. But, yes, I have shown it before.
23 And at this point we don't have a working offer on it, but I
24 feel that we will very soon.

25 THE COURT: Mr. Jacobsen, you get two more

1 minutes.

2 MR. JACOBSEN: Okay.

3 Q. Have you shown the Springs Way house recently?

4 A. Not recently.

5 Q. Have you shown the Appalachia house recently?

6 A. Yes.

7 Q. Have you shown -- what's the other one -- the
8 Sailmaker house?

9 A. Yes.

10 Q. Have you represented houses for Trustee's for a
11 long time? How many years? Five? Six years?

12 A. 5 or 6 years.

13 Q. You sound knowledgeable, that's why I asked.

14 MR. JACOBSEN: I think I'm finished with my
15 questions.

16 THE COURT: Anything further?

17 MR. LEVICK: Nothing, Your Honor.

18 THE COURT: Okay. All sides rest -- you may
19 step down. All sides rest and close on evidence?

20 MR. LEVICK: Yes, Your Honor.

21 THE COURT: Mr. Jacobsen?

22 MR. JACOBSEN: The only other thing I can
23 think of is Mr. Levick has made numerous calls to me trying
24 to get me to agree to whatever the motion is that he's
25 fighting with me on. And in some of these calls he's

1 been -- he calls without my attorney present. I don't have
2 an attorney now. But back when I had an attorney, he'd make
3 his calls directly to my home and pressured me into trying to
4 make decisions. Actually making out in out threats.

5 MR. LEVICK: Your Honor, I'm going to object.

6 I have never done such a thing. When he was represented by
7 counsel, I went through his counsel. And we heavily
8 negotiated a respective settlement that Mr. Jacobsen reneged
9 on. And Ms. Lindauer, who was his counsel, can come in and
10 testify to the many hours that Ms. Lindauer and I spent in my
11 office trying to resolve all of these issues.

12 So, no, That's not true. He was represented by
13 Ms. Lindauer and I went through Ms. Lindauer. Before that,
14 Mr. Rossini. I don't know how that's relevant.

15 MR. JACOBSEN: You have never called me
16 directly? That's a question.

17 MR. LEVICK: I'm not on the stand. And I
18 haven't --

19 MR. JACOBSEN: Can I put Mr. Levick under
20 oath, please?

21 THE COURT: You can. But you only have two
22 minute with him. And he can testify from where he is. But
23 get on that microphone, Mr. Levick.

24 Let's have you sworn.

25 (The witness was sworn by the courtroom deputy.)

1 LARRY LEVICK

2 The witness, having been duly sworn to tell the truth,
3 testified on his oath as follows:

4 DIRECT EXAMINATION

5 BY MR.JACOBSEN:

6 Q. Have you ever called me directly without me having
7 my attorney present?

8 A. Yes.

9 Q. How many times?

10 A. Well, I'm going to tell you --

11 THE COURT: Mr. Jacobsen, you're going to have
12 to stand by a microphone.

13 A. It was the time that was the subject of the order
14 to show cause. I was supposed to give notice to South Shore
15 Capital of the hearing and I asked, Mr. Meyer, Who's the
16 attorney representing South Shore Capital since you're
17 withdrawing? They need to come to this status conference.
18 And he gave me the number and I called and it happened to be
19 you because you were the person impersonating South Shore
20 Capital. That was the subject of the whole order to show
21 cause.

22 The other time that we talked, Mr. Jacobsen, is when
23 you were calling Mr. Moser on an emergency basis saying that
24 your lawsuit against the Srameks was about to be dismissed
25 and why she filed certain things with the Court. And you

1 wanted someone to call you back. So I called you back to
2 discuss what we could do to prevent the Sramek case from
3 being dismissed. Those are the only times I recall talking
4 to you without your attorney present.

5 Q. You don't recall calling me in the middle of July
6 to influence me into allowing the sale of the Acklin house
7 and the Tice Valley house?

8 A. No. I did not do that.

9 MR. JACOBSEN: Your Honor, I have a copy of my
10 phone bill showing his calls to me. This will show that he's
11 lying.

12 THE COURT: Okay. Are you finished with this
13 witness?

14 All right. You're finished with this witness.

15 Mr. Jacobsen, I have the impression right now that
16 you're just enjoying being in front of that microphone.
17 You've had your day in court.

18 So the debtor's motion for abandonment is denied as to
19 the Appalachia house and other properties. The Trustee does
20 not have to pay to debtor any rents received during the
21 pendency of the done.

22 The debtor has failed to prove the properties are
23 burdensome or of inconsequential value or benefit to the
24 estate. We stand adjourned.

25 (End of Proceedings.)

1 C E R T I F I C A T E

2 I, CINDY SUMNER, do hereby certify that the
3 foregoing constitutes a full, true and complete transcription
4 of the proceedings as heretofore set forth in the
5 above-captioned and numbered cause in typewriting before me.

6

7

8

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11

12

13

14 /s/Cindy Sumner

15 _____
16 CINDY SUMNER, CSR #5832
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